

Honolulu, Hawaii

FEB 19 2014

RE: S.B. No. 2476
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Commerce and Consumer Protection, to which
was referred S.B. No. 2476 entitled:

"A BILL FOR AN ACT RELATING TO REAL ESTATE APPRAISERS, "

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require real estate appraisers acting as arbitrators to record arbitration awards; findings of fact, rationale, and information regarding the evidence; and any supplementary, dissenting, or explanatory opinions with the Bureau of Conveyances within ninety days of the determination of the award and its notification to the parties; and
- (2) Specify that no agreement between the parties or the appraisers acting as arbitrators may preclude or deny the recordation of the award, the record of the award, or any supplementary, dissenting, or explanatory opinions.

Your Committee received testimony in support of this measure from the Citizens for Fair Valuation; McCully Works, Inc.; Bacon-Universal Company, Inc.; Mutual Plumbing Supply Co., Inc.; Pacific Jobbers Warehouse, Inc.; and three individuals. Your Committee received testimony in opposition to this measure from the Land Use Research Foundation of Hawaii.



Your Committee finds that Act 227, Session Laws of Hawaii 2011 (Act 227), was intended to require real estate appraisers, when acting as arbitrators in long-term ground lease rent valuations, to provide relevant data related to the findings of fact and methodologies employed to support their conclusions, within the record of the award. Act 227 was intended to bring data, openness, and transparency to a market controlled by few landlords and very few commercial and industrial appraisers.

Unfortunately, since the enactment of Act 227, many appraisers acting as arbitrators have required confidentiality clauses to be added to submission agreements, which govern arbitration between the parties. These confidentiality clauses frustrate the legislative intent of Act 227. Your Committee further finds that the development of an open market valuation process requires that these arbitration awards, records of awards, and related supporting materials must be public records.

Your Committee further finds that this measure does not change existing lease agreements and therefore is not in violation of the Contracts Clause of the United States Constitution. Rather, this measure requires appraisers acting as arbitrators to file arbitration reports with the Bureau of Conveyances, thereby allowing public access to data that has previously been kept solely in the hands of those who control the land.

Your Committee additionally finds that Act 227 requires appraisers in arbitration proceedings to certify compliance with the most current Uniform Standards of Professional Appraisal Practice (USPAP). Your Committee notes that USPAP has an exception to its confidentiality rule, which provides that an appraiser must not disclose confidential information to anyone other than "third parties as may be authorized by due process of law." Act 227's requirement for appraisers acting as arbitrators to report the basis of an award would therefore fall under this exception permitted by USPAP.

Your Committee also finds that amendments to this measure are needed to better ensure the openness and transparency originally contemplated by Act 227.

Accordingly, your Committee has amended this measure by:

- (1) Amending section 466K-6, Hawaii Revised Statutes, rather than adding a new section to chapter 466K, Hawaii



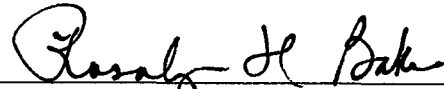
Revised Statutes, and further amending section 466K-6, Hawaii Revised Statutes, by:

- (A) Requiring arbitration awards, records of awards, and related supporting materials to be public records;
 - (B) Clarifying that real estate appraisers named or appointed as an arbitrator in a submission agreement to appraise or arbitrate entered into after July 1, 2014, shall record with the Bureau of Conveyances all arbitration awards; records of awards, if separately issued; and any supplementary, dissenting, or explanatory opinions on awards within ninety days of the notification of the determination of the award to the parties;
 - (C) Clarifying that recording requirements for records of and related to arbitration awards shall not be precluded or denied through agreement between the parties or arbitrators; and
 - (D) Specifying that failure to comply with recording requirements is a violation of real estate appraiser license or certification requirements;
- (2) Amending the purpose section for clarity; and
 - (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2476, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2476, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,

A handwritten signature in cursive script, reading "Rosalyn H. Baker", written over a horizontal line.

ROSALYN H. BAKER, Chair



Record of Votes
Committee on Commerce and Consumer Protection
CPN

*Only one measure per Record of Votes